

No. 20327

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

---

PAUL M. DUBOIS,

*vs.*

*Appellant,*

UNITED STATES OF AMERICA, and GENERAL ELECTRIC  
COMPANY,

*Appellees.*

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## REPLY BRIEF OF GENERAL ELECTRIC COMPANY, APPELLEE.

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**REPLY BRIEF OF GENERAL ELECTRIC  
COMPANY, APPELLEE.**

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Comes now General Electric Company, a corporation, one of the defendants in the within proceedings and one of the appellees herein, and respectfully replies to appellant's opening brief as follows:

**Statement of Basis of Jurisdiction.**

A statement of the pleadings disclosing the basis upon which the District Court had jurisdiction is somewhat difficult. The complaint was prepared and filed herein by the plaintiff, Paul M. Dubois, "acting as his own attorney". The complaint allege that plaintiff is a resident of the City of Whittier, State of California, and is within the jurisdiction of the District Court of the United States, for the Southern District of California, Central Division [Tr. p. 2]. The complaint further allges that "this action is brought under the Civil Rights Laws" [Tr. p. 2]. The amount in controversy is substantially in excess of \$10,000.00, exclusive of interest and costs [Tr. p. 5]. Plaintiff has apparently sought to bring his action within the grant of juris-

diction contained in 28 U.S.C. 1331. It is an action of a civil nature, the matter in controversy exceeds the sum or value of \$10,000.00 exclusive of interest and costs, and arises under laws of the United States, to wit, unspecified civil rights laws.

Furthermore, in view of the fact that the United States of America is a party defendant and is alleged to have committed a number of vague wrongs against the plaintiff while acting through and by certain unnamed agents, it is suggested that plaintiff has sought to bring his action within the jurisdictional grant of 28 U.S.C. 1346(b).

In view of the fact that plaintiff "acting as his own attorney" has sought to bring his controversy within specific grants of jurisdiction to the District Court, and since the appellees in the court below challenged initially the capacity of the plaintiff to sue, and that challenge was the only matter considered by the court below, it is respectfully submitted that the District Court had jurisdiction of the matter, a least for the limited purpose of determining the capacity of one of the parties before it, and properly considered that issue before reaching the question of subject matter jurisdiction upon its merits. In other words, the capacity of the plaintiff to act was challenged. The District Court was called upon to exercise its inherent jurisdiction over all matters pending before it and determine if the plaintiff had any capacity to be before it, even to determine the issue of subject matter jurisdiction. The District Court did, in fact, exercise this inherent jurisdiction, and it is respectfully submitted that it exercised it properly.

Assuming that there was at last the limited jurisdiction discussed above in the District Court, then the matter is properly before this court. 28 U.S.C. 1291.

A final judgment of dismissal was entered by the District Court [Tr. p. 30] and proper notice of appeal was taken to this court [Tr. p. 34].

### Statement of the Case.

The plaintiff, the appellant herein, commenced the within action in the District Court "acting as his own attorney" by the filing of his complaint. The defendants named in the complaint were the United States of America and General Electric Company. Each of the named defendants moved the court to dismiss plaintiff's action on the ground that the complaint showed upon its face that the plaintiff lacked capacity to sue. Upon hearing these motions the trial court concurred and entered an order dismissing plaintiff's complaint without prejudice to its being renewed "in proper form".

The lack of capacity which appellees urged and the trial court found is predicated upon plaintiff's incompetency. The motions of the appellees as heard by the trial court, and the determination of the trial court, were based entirely upon the contents of the face of appellant's complaint. If this appellee understands appellant's point correctly, it is to the effect that a determination of incompetency cannot be made upon such a limited inquiry and that he was thus denied a fair hearing on this issue. Since appellant did not request in the trial court an opportunity to present evidence on the matter of his competency, it must be his further point, that as a matter of law, the trial court was duty bound, when presented with this issue, to ignore the allegations of plaintiff's complaint, and initiate its own inquiry upon the issue of plaintiff's competency. Appellee General Electric Company will direct its discussions which follow to these questions.



## ARGUMENT.

### I.

**An Incompetent Person, Domiciled in the State of California, Lacks the Capacity to Sue in a United States District Court Located Within the State of California.**

Rule 17(b) of the Federal Rules of Civil Procedure provides in part as follows:

“The capacity of an individual, \* \* \* to sue or be sued shall be determined by the law of his domicile.”

The complaint asserts that the plaintiff resides, and thus presumably is domiciled, within the State of California.

In the State of California an incompetent person lacks the capacity to sue. Section 372 of the Code of Civil Procedure of the State of California provides in part as follows:

“When a minor, or an insane or incompetent person is a party, he *must* appear either by a guardian of the estate or by a guardian ad litem appointed by the court in which the action is pending, or by a Judge thereof, in each case.” (Emphasis added).

The nature of this incapacity has been described by the Supreme Court of the State of California in a case decided in 1941, *Klopstock v. Superior Court*, 17 Cal. 2d 13, at pages 18 and 19. The court states that the lack of capacity is a general disability. The incompetent has no capacity to sue and thus cannot lawfully cause the defendants to be brought into court, even if he has a good cause of action against them.



Under Federal Rule of Civil Procedure 17(b), the United States District Court must look to the law of the state of the domicile of the party in order to determine his capacity. In the present case the law to which the court must look is the law of the State of California. California law is that an incompetent person lacks the capacity to sue, that this is a general disability of such a nature that the incompetent cannot lawfully cause a defendant to be brought before the court unless the incompetent institutes the action by his general guardian or by a guardian *ad litem* appointed by the court in which the action is pending.

## II.

**Where the Defect Is Shown Upon the Face of the Complaint, a Motion to Dismiss for Lack of Capacity to Sue Is Proper.**

Although Federal Rule of Civil Procedure 9(a) provides, "When a party desires to raise an issue as to \* \* \* the capacity of any party to sue or be sued \* \* \*, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.", it has been repeatedly held that where the want of capacity is apparent on the face of the complaint it may be raised by motion to dismiss. *Coburn v. Coleman* (D.C.W.D.S.C.), 75 F. Supp. 107; *Brush v. Haskins* (D.C.W.D.Mo.), 9 F.R.D. 604 at 609; *Hershel California Fruit Products Co. v. Hunt Foods* (D.C.N.D. Calif.), 119 F. Supp. 603 at 607; *Barron & Holtzoff*, Section 301.

Therefore, it must be concluded that if the complaint in the within action contains upon its face averments which demonstrate that the plaintiff-appellant lacks the

capacity to sue under laws of the State of California, the action was properly dismissed upon the motions of the appellees.

### III.

#### Appellant's Complaint Shows His Incapacity Upon Its Face.

As noted above, the District Court is required to look to the laws of the State of California to determine the capacity of the appellant. Under such laws an *insane* or incompetent person lacks the capacity to sue. California Code of Civil Procedure, Section 372; California Probate Code, Section 1460; California Probate Code, Section 1435.2.

One may well wonder from a reading of appellant's complaint as to whether or not he is able properly to manage his property and business affairs without assistance. However, it is the question of insanity which caused the District Court to act as it did. The complaint is replete with plaintiff's allegations that he has major psychotic problems. He alleges that that he has suffered considerable emotional damage [Tr. p. 3]; that the loyalty, respect and affections of the members of the family of plaintiff were alienated and damaged [Tr. p. 4]; that plaintiff was prevented from fulfilling his natural and practical obligations to his family [Tr. p. 4]; and that "plaintiff has suffered great mental anguish caused by worry, anxiety, fear, intimidation and brain-washing, all of which in turn caused *schizophrenia*, lack of self confidence and a severely distorted private life." [Tr. p. 4]. (Emphasis added.)

Insane is defined in Webster's New International Dictionary, Second Edition, unabridged, as "Unsound;—

said of the mind; exhibiting unsoundness or disorder of mind;". The word insanity is defined in the same work as "State of being insane; unsoundness or derangement of mind, esp. without recognition of one's own illness. Insanity is rather a social and legal than a medical term, and implies mental disorder resulting in inability to manage one's affairs and perform one's social duties." Taber's Cyclopedic Medical Dictionary, Edition Nine, defines insanity as follows: "Legal term for mental derangement; a psychosis. A general term for unsoundness of mind or any mental disorder or *psychosis*." (Emphasis added.)

Webster's New International Dictionary, Second Edition, unabridged, defines schizophrenia as "A type of *psychosis* characterized by loss of contact with the environment and by disintegration of the personality. It includes dementia praecox and some related forms of insanity." (Emphasis added). Taber's Cyclopedic Medical Dictionary, Edition Nine, defines schizophrenia as "The most important of the *psychoses*, characterized by loss of contact with the environment and by disintegration of personality." (Emphasis added.)

From the foregoing definitions it is certainly clear that schizophrenia is a form of insanity and that appellant, in his complaint, describes a series of psychoses which he himself stated caused schizophrena, as well as lack of self confidence and a severely distorted private life, which certainly indicate a disintegration of personality. The appellant chose his words and presumably he was describing his condition accurately, both as to the specifics which caused the condition and the consequence of the condition, which he described accurately, both in lay and medical terms. There can be no doubt that read

by its four corners or by the specific allegations to which appellees have directed reference the complaint shows that appellant is suffering from an unsoundness of mind of the type known as schizophrenia and of a type which the law considers to be insanity for the purpose of determining capacity.

#### IV.

#### **The Inquiry Was Proper and the Judgment Was Appropriate.**

In considering the matter before it, the trial court certainly ascribed to the words of the complaint their common and ordinary meanings, it complied with the mandate of Federal Rule of Civil Procedure 8 to liberally construe the document so as to do substantial justice and followed the intent and purposes of Rule 12. The only complaint which appellant has is that the trial Judge failed to conduct upon his own motion an inquiry, the purpose of which would be to prove that a number of the essential allegations of plaintiff's complaint were false. Our research has failed to disclose any authority requiring such an inquiry. Furthermore, appellant wholly overlooks the fact that it is obvious the trial court in fact was motivated by a desire to assist the appellant. In addition to being gravely concerned by the allegations of plaintiff's condition, the trial court was almost assuredly mindful of the allegations of plaintiff's complaint when measured by the other grounds of the Government's motion to dismiss, and the affirmative matters of defense alleged by General Electric Company. A cursory reading of the entire record discloses that as the allegations stand, all of the grounds of the Government's motion and the affirmative averments of the defendant General Electric Company are good de-

fenses to plaintiff's allegations. It is undoubtedly true that the vast procedural difficulties which plaintiff has created by his own complaint can best be resolved by a new action commenced upon any proper claims which plaintiff may have without the impediments which the present action contains. It is also likely that the learned District Judge exercised the same wisdom as District Judge Picard followed in *Gale v. Wagg* (D.C.E.D. Mich.), 140 F. Supp. 6, where, after reviewing a complaint filed *in propria persona* and involving a question of competency of the plaintiff, he said, at page 10 of the opinion, "The appointment of a guardian would merely prolong the agony."

In any and all events, and regardless of the motivations of the learned trial Judge, his disposition of this case was entirely proper. See *Lewis v. Fontenot* (C.C.A. 5), 110 F. 2d 65, certiorari denied, 61 S. Ct. 22, 311 U.S. 646, 85 L. Ed. 413, rehearing denied, 61 S. Ct. 168, 311 U.S. 727, 85 L. Ed. 473.

### Conclusion.

It is respectfully submitted that the trial Judge acted properly upon all matters before him in accordance with the applicable procedural rules and substantive law, and by his order accomplished substantial and appropriate justice to all parties before him. The judgment below should be affirmed.

Respectfully submitted,

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By CLIFFORD B. HUGHES,  
CROMWELL WARNER, JR.,  
*Attorneys for General Electric  
Company, Appellee.*



### **Certificate.**

I certify that in connection with the preparation of this brief I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit and that in my opinion the foregoing brief is in full compliance with those rules.

CLIFFORD B. HUGHES

CROMWELL WARNER, JR.



